

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 3, 2017, which held that the appellant was not eligible for backdated disability assistance prior to August 1, 2016.

The minister designated the appellant as a Persons with Disabilities (PWD) on July 14, 2016 and in accordance with section 23 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant was not eligible to receive disability assistance until the first day of the following month, or August 1, 2016.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 2 and 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2.1 and 23

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22 (3) (b) of the *Employment and Assistance Act*.

Relevant Evidence Before the Minister at Reconsideration

Ministry Records

- On April 20, 2016 the ministry received the appellant's PWD application.
- On July 14, 2016 the ministry approved the appellant's designation for PWD, effective August 1, 2016.

- A letter, dated August 4, 2017, was sent to the appellant from Service Canada providing information about the appellant's Canada Pension Plan Disability (CPPD) benefit.
 - The letter explains that the Canada Pension Plan (CPP) is paying \$9,506.05 directly to Social Services BC (i.e., ministry) because the appellant signed a consent form, allowing CPP to pay Social Services BC back for the period the appellant was eligible to receive both benefits. This amount covered the period April 2016 to July 2017.
- The letter also included a Payment Explanation Statement with a breakdown of the appellant's CPPD retroactive payments. In 2016 the CPPD benefits were paid for nine months at \$590.51/month and in 2017, eight months at \$598.78/month.
- Medical Report - information sheet dated February 23, 2016 from Service Canada, explaining the effective date of benefit payments. "A disability benefit is payable from the fourth month after you are deemed to have become disabled."

- On August 29, 2017 the appellant contacted the ministry and advised that she had recently been approved for CPPD backdated to April 2016. She requested the difference between income assistance and disability assistance rates for April 2016 to July 2016.
- The appellant stated that her PWD application came in to the ministry in April 2016, but was not approved until July, for August 1, 2016 and if her CPPD benefits can be backdated based upon medical evidence, the ministry should also have backdated her PWD benefits from the time it had the application and that she should not be penalized due to the ministry's backlogs.
- The appellant stated that as she obviously met eligibility for her disability with the federal government, and that since the ministry will accept the CPPD medical information, then it should be able to backdate her PWD benefits to the date of her application received by the ministry.

Appellant (reason for request for reconsideration)

- In January 2016, the Ministry Recovery Program requested that the appellant apply for CPPD benefits from the federal government. As a result, she received monthly benefits of \$598.78 toward her monthly PWD benefits.
- Since August 2016 the appellant has received benefits of \$946.42 per month.
- CPPD reimbursed Social Services BC 17 months of payments for the months she was eligible to receive both benefits – April 2016 to July 2017 (nine payments of \$590.51 (2016) and eight payments of \$598.78 (2017)).
- The appellant's effective date of benefit payments with CPPD is payable from the fourth month after she was deemed to have become disabled. Since her doctor determined that date to be December 2015, her benefits with CPPD started April 2016 (the period she was eligible to receive both benefits).
- Social Services BC PWD differs in the eligibility date by counting from the month it receives the Service Canada doctor's medical report, (which can take some time), counting four to six months from that date. Social Services BC received the forms in April 2016; the effective date for PWD payments was August 2016.
- Two governments are now paying for her disability benefits.
- Social Services BC was reimbursed \$590.51 for April, May, June and July 2016. The appellant received \$610 in benefits for April, May, June and July 2016 from Social Services BC, based on the differing eligibility dates. The appellant is asking for reimbursement of \$590.51/month (for the four months), to be divided between Social Services BC and herself.
- As in April, May, June and July, 2016 the appellant was deemed eligible to receive both benefits by CPPD, her request is that her benefits are topped up by \$336.42 from the \$610 that she was paid by Social Services BC (\$610 + \$336.42 (reimbursement) = \$946.42).

Additional Evidence

Ministry

The ministry's submission, dated October 26, 2017, is the reconsideration summary provided in the Record of Ministry Decision.

Appellant

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22 (4) (b) of the *Employment and Assistance Act*. The panel considered the appellant's written submission, received on October 23, 2017, as argument and will be addressed in Part F- Reasons for Panel Decision, below.

Findings of Fact

The panel finds that the appellant is eligible for CPPD benefits through the federal government. The appellant's CPPD benefits started the fourth month after she was deemed to have become disabled. Since her doctor determined that date to be December 2015, her CPPD benefits started April 2016.

The appellant is also eligible for Persons with PWD benefits, through the ministry.

The minister designated the appellant as a PWD on July 14, 2016.

For April, May, June and July 2016, the appellant received assistance of \$610 per month.

Since August 1, 2016 the appellant received assistance of \$946.42 per month.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision dated October 3, 2017, to deny backdated disability assistance prior to August 1, 2016.

The minister designated the appellant as a PWD on July 14, 2016, and since Section 23 (1) of the EAPWDR states that a person is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a PWD, the ministry determined that the appellant was not eligible to receive disability assistance until August 1, 2016.

The legislation provides the following:

Employment and Assistance for Persons with Disabilities Act

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

Effective date of eligibility

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

....

Employment and Assistance for Persons with Disabilities Act

Section 2

Persons with disabilities

2 (1) In this section:

...

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment...

...

Employment and Assistance for Persons with Disabilities Regulation

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

...

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan (Canada)*.

Ministry Position

The ministry argues that section 23 (1) of the EAPWDR does not allow for discretion when determining the effective date of eligibility for disability assistance. In accordance with section 23 (1) as the minister determined the appellant was eligible for PWD designation on July 14, 2016, she was not eligible to receive disability assistance until the first day of the following month – in the appellant's case that was August 1, 2016.

Appellant Position

The appellant provided the following argument in her written submission on the appeal:

I did not use the word backdate nor ask for backdated dates in my written request. I asked for reimbursement payments to be distributed fairly between Social Services BC and I during the differing dates of eligibility April, May, June, July of 2016. On those dates I was deemed eligible to receive both benefits by CPPD based on and determined by my disabilities and CPP contributions. Taxes to be paid by me.

I can't imagine any legislation that states that if I qualify for a disability payment based on my disabilities and CPP contributions, that if the dates of eligibility differ, Social Services because they have my S.I.N number, date of birth and full name – can assume that my disabilities & CPP contributions are Social Services BC disabilities and CPP contributions until Aug 1 2016 when I'm deemed eligible by Social Services BC. Therefore, taking that money paid out on the differing starting dates, where CPP has claimed both parties are to pay on my behalf. Especially when I'm taxed on that money. That does not sound like a social service on behalf of the impoverished disabled, it sounds like a disservice which I'm sure is not Social Services BC intentions/Legal Code.

Panel Decision

The appellant is eligible to receive disability benefits under the Canada Pension Plan - CPPD (federal government) and the *Employment and Assistance for Persons with Disabilities Act* and Regulation - PWD (ministry). As the effective date of CPPD benefits is payable from the fourth month after the appellant was deemed to have become disabled (December 2015), under the federal legislation, her CPPD benefits started April 2016, as set out in the letter to the appellant dated August 4, 2017 from Service Canada.

The ministry differs in the eligibility date for PWD disability benefits. The ministry received the appellant's application for designation as a PWD on April 20, 2016. Following the ministry's review of the appellant's application and supporting documentation, the minister designated the appellant as a PWD on July 14, 2016, having been satisfied that the requirements in Section 2 of the EAPWDA had been met. In accordance with section 23 (1) of the EAPWDR, the appellant was not eligible to receive disability assistance until the first day of the month after the month in which the minister designates the applicant as a PWD, or August 1, 2016.

The appellant argues that as she met eligibility for her disability with the federal government effective April 2016, and since the ministry will accept the CPPD medical information, the ministry should be able to backdate the PWD portion of her benefits to April 2016 when her application was received by the ministry.

Section 2 (2) of the EAPWDA, provides an alternative grounds for designation ...as a person with disabilities...if the minister is 'satisfied' that the person is in a prescribed class of persons...", and section 2.1 of the EAPWDR, includes "a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan (Canada)*". However, the appellant does not dispute that she advised the ministry on August 29, 2017 that she was recently approved for CPP disability and, by this time, she had already been designated by the ministry as a PWD based on her previous application to the ministry. The grounds for designation as a PWD under Section 2(2) of the EAPWDA are stated as being in the alternative and the appellant had been designated by the ministry under one of those grounds.

Although the appellant's argument is understandable, the two governments (federal and provincial) are each bound by entirely different sets of legislation and policy. That is, there is no requirement by the federal government (i.e., CPP) to follow legislation, or policy set by the ministry, and there is no requirement by the ministry to follow legislation, or policy, set by the federal government. While the ministry can use information it deems appropriate, to make decisions, it is not bound to follow the same decision another government made.

The ministry is bound by provincial legislation - in this case section 23 (1) of the EAPWDR, which states that an applicant is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a PWD. Accordingly, the panel finds that the ministry reasonably determined that, as the appellant was designated by the ministry as a PWD on July 14, 2016, the appellant was not eligible to receive disability assistance until August 1, 2016, the first day of the month after the month in which she was designated.

Conclusion

For these reasons, the panel finds the ministry's decision was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision. Therefore, the appellant's appeal is not successful.